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DIVISION II

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STATE OF WASHINGTON

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Court of Appeals No. 43897-6-II

COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION TWO

JOHN P. HYNDY and ELISHA HYNDY,

Respondents,

v.

EMMA M. SCHMID: TRUSTEE OF THE SCHMID LIVING TRUST
DATED APRIL 18, 1989; GENERAL PARTNER OF THE SCHMID
LIVING PARTNERSHIP -- II; and MANAGER OF SCHMID CR, LLC,

Appellants.

APPELLANTS' OPENING BRIEF

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I. INTRODUCTION

The key issue in this case is the interpretation of the southern boundary of John P. Hynds and Elisha Hynds' ("Respondents") southern border of their property based on the express language contained in a Short Plat.

In the case at bar, Respondents purchased Lot 1 in 1998. (CP 55) The legal description for Lot 1 was contained in Short Plat 2-543, recorded April 24, 1991. (CP 61) Lot 1 is located on the north side of the Columbia River in Washougal, Clark County, Washington. (CP 61) Short Plat 2-543 expressly references the southern boundary of Lot 1 as the "LINE OF ORDINARY HIGH WATER ELEVATION 19.5'." (CP 61) Given the specific southern boundary, Lot 1 was designated as consisting of exactly .47 acres. (CP 61)

Lot 1 was short platted by its' two co-owners, George and Emma Schmid.¹ Mr. and Mrs. Schmid were the sole owners of Lot 1 and contiguous property at that time. Mr. Schmid is now deceased.

Respondents sued Appellant Mrs. Schmid as Trustee of the Schmid Living Trust Dated April 18, 1989, General Partner of the Schmid Living Partnership – II, and as Manager of Schmid CR, LLC ("Mrs. Schmid").

¹ George and Emma Schmid were not Respondents' immediate predecessors in interest to Lot 1. Mr. and Mrs. Schmid conveyed Lot 1 to their son and daughter in law, James J. and Jolette K. Schmid, who subsequently conveyed Lot 1 to Respondents. (CP 55-56)

Respondents' lawsuit was an effort to quiet title to property located between the southern boundary of Lot 1 and the Columbia River.

Respondents moved for summary judgment. (CP 77-86) The Trial Court ruled on summary judgment that the property located between Lot 1 and the Columbia River was part of Lot 1. Neither the Trial Court's Order Granting Plaintiffs' First Motion for Summary Judgment (CP 178) nor the Final Judgment (CP 188) is consistent with Short Plat 2-543's express language: Lot 1's southern boundary is the "LINE OF ORDINARY HIGH WATER ELEVATION 19.5'" and it consists of a total of .47 acres. (CP 61) While there are other issues in this case, the interpretation of the southern boundary of Lot 1 pursuant to Short Plat 2-543 is the key issue.

II. ASSIGNMENTS OF ERROR AND RELATED ISSUES

A. ASSIGNMENTS OF ERROR

1. The Trial Court erred by failing to find a genuine issue of material fact regarding Mr. and Mrs. Schmid's intent in setting the southern boundary of Lot 1 precisely at 19.5' above sea level pursuant to Short Plat 2-543.

2. The Trial Court erred by granting summary judgment in Respondents' favor because said ruling was contrary to the express language of the subject plat.

3. The Trial Court erred when it refused to consider the Affidavit of Mrs. Schmid because her testimony consisted of appropriate extrinsic evidence in understanding the meaning of the express language used in Short Plat 2-543.

4. The Trial Court erred to the extent it construed any ambiguity it perceived in the plat against Mrs. Schmid.

5. The Trial Court erred by misinterpreting and misapplying the case law regarding ownership of shoreline property when it implicitly determined that Respondents own the property south of the express southern boundary of Lot 1 all the way to the water's edge of the Columbia River.

B. ISSUES PERTAINING TO ASSIGNMENTS OF ERROR

1. Whether genuine issues of material fact exist with respect to interpreting the southern boundary of Lot 1 when the face of the plat expressly states that the southern boundary of Lot 1 is the "LINE OF ORDINARY HIGH WATER ELEVATION 19.5'," said boundary description on the face of the plat is expressly different from Mr. and Mrs. Schmid's vesting deeds (which reference title to the meander line of the Columbia River), the face of the plat expressly grants an area of property no larger than .47 acres, and when no evidence was presented by Respondents as to whether there is a any actual or meaningful difference between the location of the meander line and the Line of Ordinary High Water – Elevation 19.5'? (Assignment of Error 1)

2. Whether the Trial Court's grant of summary judgment was contrary to the express language of Short Plat 2-543? (Assignment of Error 2)

3. Whether the Trial Court erred when it refused to consider the Affidavit of Mrs. Schmid as inadmissible extrinsic evidence when her

testimony was consistent with the express language contained in Short Plat 2-543? (Assignment of Error 3)

4. Whether the Trial Court erred by construing any ambiguity it perceived in Short Plat 2-543 against Mrs. Schmid when the mandate in summary judgment actions is to construe all facts in the light most favorable to the nonmoving party? (Assignment of Error 4)

5. Whether the Trial Court erred by misinterpreting and misapplying the case law regarding ownership of the property between the express southern boundary of Lot 1 and the ordinary high water mark of the Columbia River when Washington case law explicitly states a predecessor in interest will not be deemed to have conveyed all property to the line of ordinary high water when there is a clear indication that such was not intended? (Assignment of Error 5)

III. STATEMENT OF THE CASE

A. FACTUAL BACKGROUND

This matter was decided in the Trial Court by summary judgment. Many of the facts were not disputed. To the extent facts were disputed, they are set forth in the light most favorable to Mrs. Schmid.

1. Lot 1 was originally part of a much larger parcel of property (over 630 acres) that was conveyed from the United States to Richard and Betsy Ough on February 17, 1885. (CP 138-139) The deeded property was described by metes and bounds. No mention was made of the Columbia River, its meander line or the line of ordinary high water.

(CP 138) No evidence was presented to the Trial Court as to whether the metes and bounds description used in said deed corresponded with the surveyed meander line of the Columbia River.

2. Betsy Ough subsequently conveyed a certain portion of her share of the property to her son, John T. Ough. (CP 140-42) This conveyance occurred the same day Ms. Ough received the property, on February 17, 1885. (*Id.*)

3. In 1925, John T. Ough's estate conveyed the property with specific reference that the meander line of the Columbia River was the southern boundary of the property. (CP 143)

4. The reference to the meander line as the southern boundary of the subject property was carried through each of the subsequent deeds and conveyances until Short Plat 2-543 was recorded. (CP 144-149, CP 59-61)

5. The meander line of the Columbia River accordingly served as the stated southern boundary for the Lot 1 property until Short Plat 2-543 was recorded. (*Id.*)

6. Short Plat 2-543 was recorded by George and Emma Schmid on April 24, 1991. (CP 61) Short Plat 2-543 subdivided four parcels of property: Lots 1 through 3 and a remainder lot known as Tax Lot 214 in the southeast corner of the subdivision. (CP 61; Aff. of Emma M. Schmid, p. 4, CP 123)

7. Short Plat 2-543 expressly designated the southern boundary of Lot 1 as "LINE OF ORDINARY HIGH WATER

ELEVATION 19.5’.” (CP 61) Short Plat 2-543 further described Lot 1 as a specific parcel of property containing exactly .47 acres. (CP 61)

8. Short Plat 2-543’s description of the southern boundary of Lot 1 is materially different from the meander line description as the stated southern boundary in the 1977 and 1983 deeds by which Mr. and Mrs. Schmid took ownership of Lot 1 and contiguous property. (CP 57-60)

9. The Schmidts had a specific purpose in adjusting the southern boundary of Lot 1 from the meander line of the Columbia River to the Line of Ordinary High Water Elevation 19.5’. The Schmidts intended to retain any land waterward of said Line of Ordinary High Water Elevation 19.5’ in conjunction with the remainder parcel, Tax Lot 214. (*See Aff. of Emma M. Schmid*, p. 4, CP 123)

10. It was Mr. and Mrs. Schmidts’ intention to have the lots in Short Plat 2-543 serve as building lots for members of the Schmid family with the remainder property to be used for family access to the Columbia River.

11. Consistent with their intention, Mr. and Mrs. Schmid conveyed Lot 1 to James and Jolette Schmid, their son and daughter in law, in 1991. (CP 56) James and Jolette Schmid, however, subsequently conveyed Lot 1 to Respondents in 1998. (CP 55) Respondents’ vesting deed describes their property as Lot 1 of Short Plat 2-543. (CP 55)

12. Real property currently exists between the express southern boundary of Lot 1 and the ordinary high water line of the Columbia River. (See CP 100-01, 120-21)

IV. ARGUMENTS

A. STANDARD OF REVIEW

1. Regarding Summary Judgment.

Summary judgment orders are reviewed *de novo*. *Owen v. Burlington N. & Santa Fe R.R.*, 153 Wn.2d 780, 787, 108 P.3d 1220 (2003). The court assumes the same position as the trial court and examines the pleadings, affidavits, and depositions before it. *Id.* All facts and reasonable inferences “must be viewed in the light most favorable” to the nonmoving party. *Id.*

A summary judgment order is proper only when “there is no genuine issue as to any material fact and [when] the moving party is entitled to a judgment as a matter of law.” CR 56(c); *see also Balise v. Underwood*, 62 Wn.2d 195, 199, 381 P.2d 966 (1963) (“The object and function of the summary judgment procedure is to avoid a useless trial; **however, a trial is not useless, but is absolutely necessary where there is a genuine issue as to any material fact.**”) (emphasis added). A “material fact is one upon which the outcome of the litigation depends.” *Balise*, 62 Wn.2d at 199, 381 P.2d 966. The only exception to this rule is that a material fact may be “determined on summary judgment as a matter

of law where reasonable minds could reach but one conclusion.” *Smith v. Safeco Ins. Co.*, 150 Wn.2d 478, 485, 78 P.3d 1274 (2003).

2. Regarding Interpretation of a Plat.

The intention of the dedicator controls the interpretation of a plat. *Selby v. Knudson*, 77 Wn. App. 189, 194, 890 P.2d 514 (1995). The interpretation of a plat is determined by the words of the plat itself “where possible.” *Frye v. King County*, 151 Wash. 179, 182, 275 P. 547 (1929). All marks and lines appearing on the plat are to be given effect. *Wilson v. Howard*, 5 Wn. App. 169, 176, 486 P.2d 1172 (1971). “[I]f possible, the interpretation which gives effect to all markings will be followed.” *Id.* (emphasis added).

Under the older cases, parol evidence was permissible in interpreting plats only when they were determined to be ambiguous. *See, e.g., Frye*, 151 Wash. at 183. Under the modern “context” rule, the use of extrinsic evidence to discern the meaning or intent of words or terms in real property documents is permissible “even when the parties’ words appear to the court to be clear and unambiguous.” *Hollis v. Garwall, Inc.*, 137 Wn.2d 683, 693, 974 P.2d 836 (1999). In *Hollis*, the Supreme Court extended the context rule to a restrictive covenant contained in a plat. *Id.* at 695-96.

The interpretation of language contained in a plat is a mixed question of law and fact. *Rainier View Court Homeowners Ass’n v. Zenker*, 157 Wn. App. 710, 719, 238 P.3d 1217 (2010) (interpreting an easement contained in a plat). “What the original parties intended is a

question of fact and the legal consequence of that intent is a question of law.” *Id.* Because Mr. and Mrs. Schmid’s intent in establishing Lot 1’s southern boundary is a question of fact, it is ill suited to be determined on summary judgment unless “reasonable minds could reach but one conclusion.” *Smith*, 150 Wn.2d at 485, 78 P.3d 1274; *see, e.g., Thomas v. Nelson*, 35 Wn. App. 868, 871, 670 P.2d 682 (1983) (construing the effect of deeds on summary judgment because all factual issues were uncontested).

3. Summary Judgment was an Ill-Suited Avenue for Determining the Dedicators’ Intent.

The genuine issues of material fact discussed in this brief with respect to the rules for plat interpretation demonstrate why summary judgment was not the appropriate forum for determining Mr. and Mrs. Schmid’s intent regarding Lot 1’s southern boundary—particularly given the mandate that all facts be construed in the light most favorable to the nonmoving party. *Owen*, 153 Wn.2d at 787, 108 P.3d 1220; *see, e.g., Larson v. Nelson*, 118 Wn. App. 797, 810, 77 P.3d 671 (2003) (reversing the trial court’s summary judgment order and remanding to the trial court so that a trial could be held to resolve the factual issues).

B. LAW REGARDING BOUNDARY LINES FOR NAVIGABLE RIVERS

There are four pertinent rules in determining a property’s boundary line with respect a navigable river:

- (1) With respect to the State and a private property owner, the line of ordinary high water provides the actual boundary for the property

regardless of whether the river's "meander line" is referenced as the boundary line in the deed.² *Smith Tug & Barge Co. v. Columbia-Pacific Towing Corp.*, 78 Wn.2d 975, 983, 482 P.2d 769 (1971).

Based on the Schmid's vesting deeds and the deeds of their predecessors in interest, Mr. and Mrs. Schmid owned the property now platted as Lot 1 to the ordinary high water mark of the Columbia River.

(2) The State of Washington owns all area within the banks up to the line of ordinary high water of a navigable river. Const. art. XVII, § 1.

(3) The "boundary shifts with the natural and gradual erosion and accretion of the river. Although one may lose his land by gradual natural erosion, he is entitled to the addition caused by natural accretion." *Smith Tug & Barge*, 78 Wn.2d at 983, 482 P.2d 769.

(4) A private conveyance of property bordering a navigable river by a predecessor to a successor, as a general rule, will convey all property to the water's edge **unless, as is the case here, the deed or plat contains "a clear indication to the contrary."** *Harris v. Swart Mortg. Co.*, 41 Wn.2d 354, 361, 249 P.2d 403 (1952) (analyzing whether the 200' of accreted shoreline located waterward of the meander line had been

² Many tracts of federal land patented prior to Washington becoming a state referenced the river's meander lines as the property's boundary. The meander lines were run by government surveyors as close to the waterline as possible "as a means of ascertaining the quantity of land" prior to sale. *Smith Tug & Barge*, 78 Wn.2d at 983, 482 P.2d 769; *Harris v. Swart Mortg. Co.*, 41 Wn.2d 354, 361, 249 P.2d 403 (1952). Due to natural erosion and accretion to the shorelines of navigable rivers, however, meander lines are not the boundary lines; rather the water itself serves as the boundary line. *Smith Tug & Barge*, 78 Wn.2d at 982-983, 482 P.2d 769.

conveyed or retained by the predecessor in interest in light of the meander line boundary description) (emphasis added).

C. THE TRIAL COURT ERRED BY FAILING TO FIND A GENUINE ISSUE OF MATERIAL FACT PROHIBITING SUMMARY JUDGMENT.

The key fact in this case is whether Mr. and Mrs. Schmid intended to retain any portion of property located waterward of Lot 1. Short Plat 2-543 indicates they did.

1. “LINE OF ORDINARY HIGH WATER ELEVATION 19.5’.”

At the time Lot 1 was short platted, the Schmidts owned property to the ordinary high water mark, or meander line, of the Columbia River—regardless of the location of the surveyed meander line.³ *Smith Tug & Barge*, 78 Wn.2d at 983, 482 P.2d 769. If the Schmidts had intended to convey everything they had when they sold Lot 1 to James and Jolette Schmid (Respondents predecessors in interest), Short Plat 2-543 would have only referenced the line of ordinary high water, or meander line, as the southern boundary for Lot 1. The additional language “19.5’” manifests an intention by Mr. and Mrs. Schmid to retain ownership of any property waterward of that precise elevation. As such, the specific reference to 19.5’ above sea level as the southern boundary was not a generic description, such as the “meander line” would be, but an express

³ Respondents never put forth evidence of where the surveyed meander line is in relation to Lot 1’s stated southern boundary. At oral argument, Respondents’ counsel stated his belief that the meander line is located in the river. RP 2, ls. 12-13.

provision used to specify that any property waterward of 19.5' above sea level was not part of Lot 1. This indicates an intention, within the four corners of the Short Plat, by Mr. and Mrs. Schmid to retain ownership to any accreted property located south of Lot 1. Ignoring this precise elevation as a boundary line is a failure to take into consideration “all markings” on the plat—a key requirement in determining intent. *Wilson*, 5 Wn. App. at 176, 486 P.2d 1172.

2. Short Plat 2-543 Granted no more than .47 Acres to Lot 1.

Further emphasizing the precise location of Lot 1's southern boundary is Short Plat 2-543's notation that Lot 1 contained exactly .47 acres—no more and no less, and given the metes and bounds description on the Short Plat, the only way you get to .47 acres is by using the express southern boundary of 19.5' elevation. This also indicates an intention by Mr. and Mrs. Schmid to create a static southern boundary of “LINE OF ORDINARY HIGH WATER ELEVATION 19.5’,” and in addition, to retain ownership to any accreted property located south of Lot 1. By quieting title to property waterward of Lot 1, the Trial Court gave Respondents more property than they had bargained for when they purchased. The precise area of Lot 1 as noted on the Short Plat must be taken into consideration in determining the Schmid's intent.

3. Affidavit of Emma M. Schmid.

The Trial Court further failed to take into consideration the sworn testimony of Mrs. Schmid, discussed more thoroughly in Section IV.D.

below. Mrs. Schmid specifically stated that the southern boundary of Lot 1 was changed from the surveyed meander line (which by law would have been the Columbia River's line of ordinary high water) to the line of ordinary high water elevation 19.5'. (CP 123) The purpose in doing so was to allow the Schmid's ownership and access of any land waterward of Lot 1. (*Id.*) Any potential remainder property could then be accessed via the identified remainder lot on the east side of Short Plat 2-543.⁴ (*Id.*) Mrs. Schmid's testimony is consistent with the markings on the plat.

4. The Location of the Meander Line.

Another key issue of fact in determining the intent of Mr. and Mrs. Schmid is the location of the meander line with respect to the line of ordinary high water at the time Lot 1 was short platted. The meander line may be located south⁵ of the "LINE OF ORDINARY HIGH WATER ELEVATION 19.5'." If this is the case, Short Plat 2-543 gave Lot 1 less than the Schmid's possessed, providing additional evidence that the Schmid's intended to retain such remainder.

5. The Trial Court's Summary Judgment Order is Contrary to the Express Language of Short Plat 2-543.

The Trial Court's decision is contrary to the express language of Short Plat 2-543. While we do not know exactly what evidence the Trial

⁴ Tax Lot 214 referred to by Mrs. Schmid in her Affidavit is the rectangular-shaped tract on the east side of Short Plat 2-543.

⁵ See RP 2, ls. 12-13. No evidence was presented on this issue to the Trial Court. Respondents' counsel merely stated his belief to the Trial Court that the meander line is now located in the Columbia River.

Court relied on in granting Respondents' motion for summary judgment since findings of fact and conclusions of law are not required for summary judgment orders, CR 52(a)(5)(B), we do know it relied on outside evidence that contradicted the express language of Short Plat 2-543.

Briefly, in quieting title to any property waterward of the 19.5' elevation line, the Trial Court rendered such express language on the Short Plat meaningless along with the .47 acre size limitation. *See Wilson*, 5 Wn. App. at 176, 486 P.2d 1172; *see also Colo. Structures, Inc. v. Ins. Co. of the West*, 161 Wn.2d 577, 588, 167 P.3d 1125 (2007) (stating that contracts should be construed as a whole, and if reasonably possible, in a manner giving effect to all provisions). It would also give Respondents more property than they bargained for. This was not the Schmid's intent as evidenced by the express terms of the plat.

D. THE TRIAL COURT SHOULD HAVE CONSIDERED THE AFFIDAVIT OF EMMA SCHMID

The Trial Court refused to consider the Affidavit of Mrs. Schmid regarding the Schmid's intent when short platting Lot 1. RP 12, ls. 14-15. This was error. While the older cases only allowed extrinsic evidence to interpret a plat when the plat was ambiguous, the modern approach, including in real estate documents, is to allow extrinsic evidence—even when a document is not ambiguous so long as it does not contradict the express language of the document. *Hollis*, 137 Wn.2d at 693-97, 974 P.2d 836. Such is the case here.

Ms. Schmid's testimony was consistent with the express terms of Short Plat 2-543. In *Hollis*, the court refused to consider affidavit testimony given by 1 of 10 parties to a contract. *Id.* at 695, 974 P.2d 836. Here, however, the Schmid's were the only party to the Short Plat. Furthermore, Mrs. Schmid's affidavit contained no testimony regarding "subjective intent as to the meaning of a contract word or term" as prohibited by *Hollis*. She merely stated it was the Schmid's intention to retain ownership of any property "not expressly included in the plat.". (CP 123) Mrs. Schmid's testimony was consistent with the terms of the Short Plat. It does not vary, contract or modify any of its written words. *See id.* It was error for the Trial Court not to consider Mrs. Schmid's testimony.

E. THE TRIAL COURT ERRED TO THE EXTENT IT CONSTRUED ANY AMBIGUITY IT PERCEIVED IN THE PLAT AGAINST MRS. SCHMID.

The Trial Court erred to the extent it construed any ambiguity it perceived in the plat against Mrs. Schmid. *See* RP 11, ls. 6-8. While Mrs. Schmid acknowledges that doubts regarding intent are construed against the maker of a plat or map at trial, *see Tsubota v. Gunkel*, 58 Wn.2d 586, 590, 364 P.2d 549 (1961),⁶ that rule should not apply at the summary judgment proceeding in light of the Supreme Court's mandate that all facts and inferences "be viewed in the light most favorable" to the nonmoving party. *Owen*, 153 Wn.2d at 787, 108 P.3d 1220. It was error to

⁶ *Tsubota* was not a summary judgment case.

the extent the Trial Court failed to view all facts and inferences in the light most favorable to Mrs. Schmid for purposes of summary judgment.

F. THE TRIAL COURT INCORRECTLY CONSTRUED THE LAW REGARDING BOUNDARY LINES FOR SHORELINE PROPERTIES.

To the extent the Trial Court quieted title to the property waterward of the express southern boundary of Lot 1, it incorrectly applied Washington law. The general rule in Washington is that a conveyance of real property bordering a navigable river conveys all property to the river's line of ordinary high water. *Harris*, 41 Wn.2d at 361, 249 P.2d 403. This rule is particularly geared to resolve cases where accretion has moved the line of ordinary high water waterward away from the stated meander line boundary, creating additional land than originally granted. *See id.* It appears to have been created due to boundary descriptions commonly referencing meander lines as the border when in fact those meander lines may be upland from the line of ordinary high water. *See id.* The rule thus resolves ownership of the accreted land in favor of the grantee, giving the grantee all land to the line of ordinary high water as it currently exists.

An important exception exists. When the plat or deed contains a clear indication that the predecessor in interest is retaining some portion of the upland property, the general rule does not apply. *Id.* Here, Short Plat 2-543 contains clear indications that the Schmidts were reserving their right to any property waterward of the express southern boundary of Lot 1. Short Plat 2-543 expressly sets Lot 1's southern

boundary at precisely 19.5 feet above sea level. Short Plat 2-543 expressly created Lot 1 at .47 acres. Mrs. Schmid testified in her Affidavit that it was the Schmid's intention to retain any property "not expressly included in the plat." (CP 123) This includes, of course, any property between Lot 1's express southern boundary and the Columbia River's line of ordinary high water. This is further consistent with the fact that the level of the Columbia River was likely above its line of ordinary high water on April 24, 1991, the day the plat was recorded, due to spring flooding.

At the very least, there exists multiple and genuine issues of material fact in this matter. The Trial Court's ruling on summary judgment should be reversed.

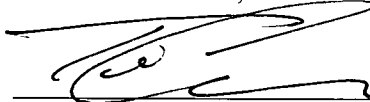
V. CONCLUSION

The Court of Appeals should reverse the Order Granting Summary Judgment and the Final Judgment entered by the Trial Court. The Court of Appeals should remand the matter back to the Trial Court with instructions that the matter be allowed to proceed to trial.

DATED this 9th day of January, 2013.

Respectfully Submitted,

LANDERHOLM, P.S.



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ROY D. PYATT, WSBA #40956
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COURT OF APPEALS
DIVISION II

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STATE OF WASHINGTON

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Court of Appeals No. 43897-6-II

COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION TWO

JOHN P. HYNDS and ELISHA HYNDS,

Respondents,

v.

EMMA M. SCHMID: TRUSTEE OF THE SCHMID LIVING TRUST
DATED APRIL 18, 1989; GENERAL PARTNER OF THE SCHMID
LIVING PARTNERSHIP -- II; and MANAGER OF SCHMID CR, LLC,

Appellants.

AFFIDAVIT OF MAILING

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STATE OF WASHINGTON)
) ss.
County of Clark)

I, Linda Gill, being first duly sworn on oath, depose and state that I am now and at all times herein mentioned was, a citizen of the United States, a resident of the State of Washington, and over the age of 21 years.


On the 9th day of January, 2013, a copy of the Appellants' Opening Brief was delivered via first class United States Mail, postage prepaid, to the following person:

Mark A. Erikson
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Vancouver, WA 98660-2904


LINDA GILL

SUBSCRIBED AND SWORN to before me this 9th day of January, 2013 by Linda Gill.




NOTARY PUBLIC for the State of Washington, Residing in the County of Clark.
My Commission Expires: 01-15-14